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ORDER 2000-12-20



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 22nd day of December, 2000

Served: December 28, 2000

Essential Air Service at

UTICA/ROME, NEW YORK

under 49 U.S.C. 41731 *et seq.*

Docket OST-2000-7556 - 8

ORDER REQUESTING PROPOSALS

Summary

By this order, the Department is requesting proposals from carriers interested in providing replacement service at Utica/Rome, New York, and setting a subsidy rate until further Department action for Champlain Enterprises, Inc.'s (d/b/a CommutAir or Continental Connection) continued provision of service at Utica/Rome while we continue to seek a replacement carrier.

Background

On June 21, 2000, CommutAir filed a 90-day notice of its intent to terminate all scheduled air service at Utica/Rome, New York, effective September 20, 2000. At the time, CommutAir provided Utica with four one-stop round trips each weekday and two and a half one-stop round trips each weekend period to Newark over Syracuse with 19-seat Beech 1900D aircraft. CommutAir is the only air carrier providing scheduled service at Utica.



By Order 2000-9-5, issued September 8, 2000, the Department prohibited CommutAir from terminating its service at Utica, required the carrier to maintain service at the community

for an initial 30-day period following the end of the 90-day notice period,¹ and requested proposals from all interested carriers for replacement service.

Since we issued our request, we have received several inquiries from carriers that appear interested in submitting proposals, but that did not have time to fully evaluate the market before the expiration of the filing deadline. CommutAir does not object to our resoliciting proposals.

On December 2, 2000, the CommutAir-US Airways code-share relationship ended and CommutAir began operating as Continental Connection. Through December 1, CommutAir provided service over a Utica/Rome-Syracuse-Newark routing. Effective December 2, CommutAir reduced its Utica/Rome service pattern to two round trips a day and changed the ultimate hub for Utica/Rome from Newark to Boston over a Utica/Rome-Syracuse-Boston routing. Continental thus far has been unwilling to allow CommutAir to provide Utica/Rome's service to Newark.

Essential Air Service

Utica/Rome's Essential Air Service (EAS) determination was established by Civil Aeronautics Board Order 84-3-68 and is defined as two round trips a day to New York City with up to one intermediate stop, with sufficient capacity to accommodate 40 passenger enplanements a day. Consistent with EAS guidelines, service must be provided with 15-seat passenger aircraft or larger.

We have discussed Utica/Rome's air service with the incumbent carrier and the community. Continental is unwilling to permit CommutAir to use its code for flying into Newark. CommutAir could serve Newark on its own but the community would lose all of the benefits of the affiliation with Continental such as frequent flyer miles, computer reservation system displays, optimum connecting times, and joint fares. Service to Boston over Syracuse, however, is not the community's first choice, and the community has requested that its service to the New York City area be restored. We then initiated discussions with Continental Airlines to explore additional options. As a result, Continental and CommutAir are currently exploring the possibility of providing service into John F. Kennedy International Airport as an alternative to Newark, with the prospect of starting service into JFK as early as February 1, 2001.

Based on the above, for the short term we will require CommutAir to provide service to either Boston, New York City, or Philadelphia--major hubs that provide excellent connections to the national transportation system. We recognize that CommutAir is now operating only two round trips a service day. We direct the carrier to begin providing three round trips a service day to Utica/Rome within 60 days of the service date of this order, the typical time needed for carriers to make changes to their schedules for booking and operational reasons. Three round trips a day to a hub are the standard we normally apply to

¹ In accordance with 49 U.S.C. 41734, we will continue to require CommutAir to maintain service at Utica/Rome until a suitable replacement air carrier is selected and has actually started service.

all but the smallest traffic-generating communities and appear sufficient to accommodate the approximately 30 enplanements a day that Utica/Rome has generated on average over the past several years.

Request for Proposals

We request that any carriers interested in providing essential air service at Utica file their proposals within 30 days of the service date of this order. In general, we ask that carriers submit proposals for two or three nonstop or one-stop round trips per day, preferably to New York City,² with 15-seat, or larger, pressurized aircraft. However, if carriers wish to provide service with smaller aircraft and provide more frequencies, or serve different hubs such as Boston or Philadelphia, we will entertain such proposals. We note that the two small hub airports of Syracuse and Albany are only 45 highway miles and 91 highway miles away from Utica, respectively, and that Southwest Airlines provides low-fare service at Albany.³ Under these circumstances, frequency of service may be of greater benefit to the community than aircraft size. We will also entertain proposals to other hubs that provide access to the national air transportation system in order to give the Department and community as broad an array of proposals as possible from which to choose. Of course, as always, we will formally solicit the community's views on any service options we receive before making a long-term carrier selection decision. In order to assist carriers in making their traffic and revenue forecasts, we have included historical traffic data in Appendix A.

Procedures For Filing Proposals

For interested air carriers that are not familiar with our procedures and recommended form for supplying the necessary information, we have prepared two explanatory documents that we will make available upon request. The first describes the process for handling carrier replacement cases under 49 U.S.C. 41734(f) and discusses in detail the process of seeking proposals, conducting financial and operational audits of the applicant carriers and selecting a replacement carrier. The second is an evidence request containing an explanatory statement, and a copy of section 14 CFR 204.4 of the Department's regulations which deals with the information required of all applicants for authority to provide basic essential air service, and provides schedules giving our recommended form for submitting data required for determining the financial and operational ability of applicants to provide dependable air service.⁴

² Newark, La Guardia or Kennedy.

³ The City of Rome is fifteen highway miles northwest of Utica and is thus closer to Syracuse but farther from Albany than Utica.

⁴ Copies of these documents can be obtained from: EAS & Domestic Analysis Division, X-53, Office of Aviation Analysis, Room 6401, Department of Transportation, 400 7th Street, S.W., Washington, DC 20590. Telephone requests for these documents are accepted at (202) 366-1053.

Community and State Comments

The communities of Utica and Rome and the State are welcome to submit comments on the proposals at any time.⁵ Early in the proceeding, comments on the perceived strengths and weaknesses of the proposals would be particularly helpful to the Department. The civic parties may also express a preference for a particular carrier or proposal option at that time, if they choose. In any event, after we conclude rate conferences with all applicants, we will provide a summary of the conference results to the civic parties and ask them to file their final comments.⁶

Other Carrier Requirements

The Department is responsible for implementing various Federal statutes governing lobbying activities, drug-free workplaces, and nondiscrimination.⁷ Consequently, all carriers receiving Federal subsidy to support essential air service must certify that they are in compliance with Department regulations regarding drug-free workplaces and nondiscrimination, and those carriers whose subsidies exceed \$100,000 over the life of the rate term must also certify that they are in compliance with regulations governing lobbying activities. All carriers that plan to submit proposals involving subsidy should submit the required certifications along with their proposals. Interested carriers requiring more detailed information regarding these requirements as well as copies of the certifications should contact the Office of Aviation Analysis at (202) 366-1053. The Department is prohibited from paying subsidy to carriers that do not submit these documents.

Final Subsidy Rates for Required Service

In accordance with 49 U.S.C. section 41734, we must provide compensation to air carriers that are required to provide essential air service to an eligible community after the 90-day notice period has expired. CommutAir is eligible for compensation beginning September 20, 2000.

As indicated, initially CommutAir provided four round trips a day to Utica, but decreased this level of service to two round trips a day on December 1. We will compensate

⁵ Civic parties should file an original and five copies of their comments in Docket OST-00-7556. This filing should be addressed to: Docket Operations and Media Management Division, SVC-124, Office of the Secretary, U.S. Department of Transportation, Room PL 401, 400 Seventh Street, S.W., Washington D.C. 20590.

⁶ In cases where a carrier proposes to provide essential air service without subsidy and we determine that service can be reliably provided without such compensation, we do not normally hold rate conferences. Instead, we rely on the carrier's subsidy-free service.

⁷ The regulations applicable to each of these areas are (1) 49 CFR Part 20, New Restrictions on Lobbying, Implementing title 31, United States Code, section 1352, entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions"; (2) 49 CFR Part 29, Subpart F, Drug-Free Workplace Requirements (Grants) implementing the Drug-Free Workplace Act of 1988; (3) 49 CFR Part 21, Nondiscrimination in Federally-Assisted Programs for the Department of Transportation--Effectuation of Title VI of the Civil Rights Act of 1964; 49 CFR Part 27, Nondiscrimination on the basis for Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance; and 14 CFR Part 382, Nondiscrimination on the Basis of Handicap in Air Travel.

CommutAir for four round trips a day for the period September 20 through December 1 to Newark. Effective December 2 we will compensate the carrier for three one-stop round trips a day to Boston until further Department action.⁸

In the meantime, we will continue to work with the community and carrier to improve Utica/Rome's air service. If the carrier wishes to make changes beyond those described here, it must first contact the Department's staff. All service must be well-timed and well-spaced.

This order is issued under authority delegated in 49 CFR 1.56a(f).

ACCORDINGLY,

1. We request that carriers interested in providing essential air service at Utica/Rome, New York, submit their proposals, with or without requests for subsidy, within 30 days of the service date of this order. An original and five copies of the proposal should be sent to the EAS and Domestic Analysis Division, X-53, Office of Aviation Analysis, Room 6401, Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590, with the title: "Proposal to Provide Essential Air Service at Utica/Rome, New York, Docket OST-00-7556;"⁹

2. The Department sets the final rate of compensation for Champlain Enterprises, Inc., d/b/a CommutAir, for the provision of essential air service at Utica/Rome, New York, as described in Appendix C, for the period September 20, 2000, through December 1, 2000, payable as follows: for each month during which essential air service is provided, the amount of compensation shall be subject to the weekly ceiling set forth in Appendix C, and shall be determined by multiplying the subsidy-eligible arrivals and departures completed during the month by \$209.37;¹⁰

3. The Department sets the final rate of compensation for Champlain Enterprises, Inc., d/b/a CommutAir, for the provision of essential air service at Utica/Rome, New York, as described in Appendix C, for the period December 2, 2000, until further Department action, payable as follows: for each month during which essential air service is provided, the amount of compensation shall be subject to the weekly ceiling set forth in Appendix C, and

⁸ The rate beginning December 2 is based on three round trips a day while the carrier is operating only two round trips a day. However, the Department compensates carriers on a flight-completed basis, so CommutAir will be compensated on a pro-rata basis until it can increase its service to three round trips a day. CommutAir has agreed to this provision, and we find the level of compensation reasonable. The annual compensation for the four round trip proposal provides for a rate of \$506,880. The annual rate for three round trips a day is \$455,700. Calculation of these rates is shown in Appendix B, and the service requirements and payout provisions are shown in Appendix C.

⁹ After serving a copy of its proposal on the civic officials of Utica, Rome, the State of New York, and each of the other applicants, each applicant must then file a certification of service with the Department's Docket Operations and Media Management Division, SVC-124. Questions regarding filings in response to this order may be directed to John McCamant at (202) 366-1060.

¹⁰ See Appendix B for the calculation of this rate, which assumes the use of the aircraft designated. If the carrier reports a significant number of aircraft substitutions, revision of this rate may be required.

shall be determined by multiplying the subsidy-eligible arrivals and departures completed during the month by \$250.94;⁸

4. The Department directs Champlain Enterprises, Inc., d/b/a CommutAir, to retain all books, records, and other source and summary documents to support subsidy claims for payment, and to preserve and maintain such documentation in a manner that readily permits its audit and examination by representatives of the Department. Such documentation shall be retained for seven years or until the Department indicates that the records may be destroyed. Copies of flight logs for aircraft sold or disposed of must be retained. The carrier may forfeit its compensation for any claim that is not supported under the terms of this order;

5. This docket will remain open until further Department order; and

6. We will serve a copy of this order on the mayors of Utica and Rome, the Airport Manager of Oneida County Airport, the Governor of New York, the New York Department of Transportation, CommutAir, and the carriers listed in Appendix D.

By:

FRANCISCO J. SANCHEZ
Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this document is available on the World Wide Web at
<http://dms.dot.gov>*

HISTORICAL TRAFFIC AT UTICA/ROME, NEW YORK

		<u>Total Enplanements</u>	<u>Enpl. Per day</u>	<u>UCA-PHL</u>	<u>PHL-UCA</u>
1997	1Q	3,305		2,268	2,080
	2Q	3,433		2,385	2,400
	3Q	3,549		2,688	2,494
	4Q	<u>2,985</u>		<u>2,169</u>	<u>2,150</u>
		13,272	36.4	9,510	9,124
1998	1Q	2,712		1,942	1,962
	2Q	3,022		2,264	2,402
	3Q	3,337		2,550	2,670
	4Q	<u>2,945</u>		<u>2,273</u>	<u>2,348</u>
		12,016	32.9	9,029	9,382
1999	1Q	2,208		1,798	1,926
	2Q	2,183		2,160	2,284
	3Q	2,106		2,103	2,061
	4Q	<u>1,703</u>		<u>1,638</u>	<u>1,469</u>
		8,200	22.5	6,699	7,740
2000	1Q	881			
	2Q	773			

Source: CommutAir Form 298-C, Schedule T-1

Appendix B

Essential Air Service to be Provided at Utica/Rome,
New York, Docket OST-00-7556

	4 r.t./day Thru Syracuse <u>December 1</u>	Effective December 2, Until <u>Further Department Action</u> SYR and ALB <u>3 r.t./day</u>
Passengers	6,549	4,785
Avg. Fare	\$98.14	\$98.14
Pax. Revenue	\$642,719	\$469,600
<u>Frt. Rev. @ 1%</u>	<u>\$6,427</u>	<u>\$4,696</u>
Total Revenue	\$649,146	\$474,296
Blk. Hours @ 97% 1/	928	817
RPMs 1/	242,313	260,000
Crew & Training @ \$124.30 hr.	\$115,350	\$101,553
Hull Ins. @ \$8.68/hr.	\$8,055	\$7,092
Fuel & Oil @ \$134.57 & \$140.76/hr. 2/ 3/	\$124,881	\$115,001
Supplies & Dispatch @ \$7.27/hr.	\$6,747	\$5,940
Maintenance @ \$208.74 & \$130.70/hr. 3/	\$193,711	\$106,782
<u>Depreciation @ \$122.89 & \$117.32/hr. 3/</u>	<u>\$114,042</u>	<u>\$95,850</u>
Total Directs	\$562,786	\$432,218
Stations & Handling	\$313,841	\$235,381
Ldg. & Aircraft Services	\$27,631	\$20,723
Res. @ \$17.52 & \$15.77/pax. 3/	\$114,738	\$75,459
Pax. Liab. Ins. @ \$.005031/RPM	\$1,219	\$1,308
<u>Administrative @ 2.41% & 2.98% 3/</u>	<u>\$24,587</u>	<u>\$22,800</u>
Total Indirects	\$482,016	\$355,671
Total Operating	\$1,044,802	\$787,889
Interest Exp. @ \$63.56 & \$125.72/hr. 2/ 3/	\$58,984	\$102,713
<u>Profit @ 5%</u>	<u>\$52,240</u>	<u>\$39,394</u>
Total Economic	\$1,156,026	\$929,996
Annual Subsidy @ 97%	\$506,880	\$455,700

1/ UCA-SYR: 48 flights/week x 52 weeks x 97% completion x 23 min./60 = 928 hours.

6,549 passengers x 37 miles = 242,313 RPMs.

UCA-SYR: 24 flights/week x 52 weeks x 97% completion x 23 min./60 = 464 hours.

3,020 passengers x 37 miles = 111,740 RPMs.

UCA-ALB: 12 flights/week x 52 weeks x 97% completion x 35 min./60 = 353 hours.

UCA-ALB: 1,765 pax. X 84 miles = 148,260 RPMs.

2/ 126 gallons per hour burn.

3/ Initial column figure is for the the period thru December 1.

4/ Big differences in unit costs for maintenance, depreciation, and interest, reflects the impact of new more expensive owned-aircraft at \$4.877 million each, but lower maintenance costs due to parts' warranties. Aircraft expenses reflect 12 year depreciation, 10% salvage, and 2,800 hrs. annual utilization.

**ESSENTIAL AIR SERVICE
PROVIDED BY COMMUTAIR AT
UTICA/ROME, NEW YORK**

Effective Period: September 20, 2000, through December 1, 2000

Service: Four nonstop or one-stop round trips each weekday and over each weekend period to Newark

Aircraft: Beech 1900D (19 passenger seats)

Timing of Flights: Flights must be well timed and well spaced to ensure full compensation.

Subsidy Rate: Per year - \$506,880
Per flight - \$209.37 ¹

Weekly
Compensation Ceiling: \$10,049.76 ²

Note: The carrier understands that it may forfeit its compensation for any flights that it does not operate in conformance with the terms and stipulations of the rate order, including the service plan outlined in the order and any other significant elements of the required service, without prior approval. The carrier understands that an aircraft take-off and landing at its scheduled destination constitutes a completed flight; absent an explanation supporting subsidy eligibility for a flight that has not been completed, such as certain weather cancellations, only completed flights are considered eligible for subsidy. In addition, if the carrier does not schedule or operate its flights in full conformance with this order for a significant period, it may jeopardize its entire subsidy claim for the period in question. If the carrier contemplates any such changes beyond the scope of the order during the applicable period of these rates, it must first notify the Office of Aviation Analysis in writing and receive written approval from the Department to be assured of full compensation. Should circumstances warrant, the Department may locate and select a replacement carrier to provide service on these routes. The carrier must complete all flights that can be safely operated; flights that overfly points for lack of traffic will not be compensated. In determining whether subsidy payment for a deviating flight should be adjusted or disallowed, the Department will consider the extent to which the goals of the program are met and the extent of access to the national air transportation system provided to the community.

If the Department unilaterally, either partially or completely, terminates or reduces payments for service or changes service requirements at a specific location provided for under this order, then, at the end of the period for which the Department does make payments in the agreed amounts or at the agreed service levels, the carrier may cease to provide service to that specific location without regard to any requirement for notice of such cessation. Those adjustments in the levels of subsidy and/or service that are mutually agreed to in writing by the parties to the agreement do not constitute a total or partial reduction or cessation of payment.

Subsidy contracts are subject to, and incorporate by reference, relevant statutes and Department regulations, as they may be amended from time to time. However, any such statutes, regulations, or amendments thereto shall not operate to controvert the foregoing paragraph.

¹ Annual compensation of \$506,880 divided by 2,421 arrivals and departures estimated to be performed, computed as follows: 48 flights per week x 52 weeks x .97 completion = 2,421

² The subsidy rate for each arrival/departure (\$209.37) multiplied by the number of subsidy-eligible flights each week.

**ESSENTIAL AIR SERVICE
PROVIDED BY COMMUTAIR AT
UTICA/ROME, NEW YORK**

Effective Period: December 2, 2000, until further Department action

Service: Three nonstop or one-stop round trips each weekday and over each weekend period to New York City, Boston or other large hub

Aircraft: Beech 1900D (19 passenger seats)

Timing of Flights: Flights must be well timed and well spaced to ensure full compensation.

Subsidy Rate: Per year - \$455,700
Per flight - \$250.94 ³

Weekly
Compensation Ceiling: \$9,033.84 ⁴

Note: The carrier understands that it may forfeit its compensation for any flights that it does not operate in conformance with the terms and stipulations of the rate order, including the service plan outlined in the order and any other significant elements of the required service, without prior approval. The carrier understands that an aircraft take-off and landing at its scheduled destination constitutes a completed flight; absent an explanation supporting subsidy eligibility for a flight that has not been completed, such as certain weather cancellations, only completed flights are considered eligible for subsidy. In addition, if the carrier does not schedule or operate its flights in full conformance with this order for a significant period, it may jeopardize its entire subsidy claim for the period in question. If the carrier contemplates any such changes beyond the scope of the order during the applicable period of these rates, it must first notify the Office of Aviation Analysis in writing and receive written approval from the Department to be assured of full compensation. Should circumstances warrant, the Department may locate and select a replacement carrier to provide service on these routes. The carrier must complete all flights that can be safely operated; flights that overfly points for lack of traffic will not be compensated. In determining whether subsidy payment for a deviating flight should be adjusted or disallowed, the Department will consider the extent to which the goals of the program are met and the extent of access to the national air transportation system provided to the community.

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Subsidy contracts are subject to, and incorporate by reference, relevant statutes and Department regulations, as they may be amended from time to time. However, any such statutes, regulations, or amendments thereto shall not operate to controvert the foregoing paragraph.

³ Annual compensation of \$455,700 divided by 1,816 arrivals and departures estimated to be performed, computed as follows: 36 flights per week x 52 weeks x .97 completion = 1,816

⁴ The subsidy rate for each arrival/departure (\$250.11) multiplied by the number of scheduled subsidy-eligible flights per week (36).

SERVICE LIST FOR THE STATE OF NEW YORK

Acadia Air, Inc.	Northwest Airlink
Amerijet International, Inc.	Omniflight Helicopter Service, Inc.
Business Express, Inc.	Pennsylvania Aviation, Inc.
Chautauqua Airlines, Inc.	Pennsylvania Commuter Airlines, Inc.
Chester County Aviation, Inc.	Southern Jersey Airways, Inc.
Colgan Air	Spectrum airlines, Inc.
Columbia Aviation, Inc.	Travelair, Inc.
Corporate Air, Inc.	Valley Air Service, Inc.
Delta Connection	
Executive Airlines, Inc.	
Gull Aviation, Inc.	Chester Anderson
Henson Aviation, Inc.	Ken Bannon
Horizon Air, Inc.	Sabrina Cranor
HubExpress, Inc.	Virgil de la Cruz
Hyannis Air Service, Inc.	E. B. Freeman
Jetstream International Airlines, Inc.	Edward Harahusk
Long Island Airlines	Robert Hart
Metroflight, Inc.	A. Edward Jenner
Midway Airlines, Inc.	John McFarlane
Midwest Express Airlines, Inc.	Eric Nordling
New England Airlines, Inc.	Mark Prange
New York Helicopter Corporation	John Sinisi
Northeast Express Regional Airlines, Inc.	Kevin Thomas